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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 272.

MRS. JESSE MILES ET AL., PETITIONERS,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONERS ON THE MERITS.

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INDEX

Brief for the Petitioners on the Merits 1

Specification of Errors 5

Summary of Argument—

1. 7

2. 7

3. 7

4. If the amendment of April 5, 1910, placed a burden upon the railroads their remedy should be carried to the halls of Congress and not to the courts of equity to override and destroy the law enacted by Congress 11

5. Liability and remedy were created by the original and amended act of Congress and that remedy, and that alone, must be employed 14

6. It would not only frustrate the intention and purposes of the act of Congress to permit an injunction in this Miles case to stand, but would take from Mrs. Miles a privilege that Congress has granted her and give it to the railroad, to whom the privilege was not granted, but against whom the privilege was granted to Mrs. Miles 17

7. Under the amendment of April 4, 1910 (45 U. S. C. A. 56), and under the further amendment of June 4, 1941, the act of Congress that creates the right and remedy provides a three-year statutory limitation 18

Conclusion 19

TABLE OF CASES

Bell vs. Wabash R. Co., (8 C. C. A.) 50 F. 2d 569 18
B. & O. R. Co. vs. Kepner, 62 S. Ct. 6, 10 ..... 10, 11, 16
C. & O. R. Co. vs. Vigor, Admr., 17 Fed. Supp. 602, 90 F. 2d 7 (c. d. 302 U. S. 705, 58 S. Ct. 26, 82 L. Ed. 545) 12, 13, 17
Dimmit Hoffman vs. Mo. ex rel. Foraker, Admr., 309 Mo. 625, 274 U. S. 20, 71 L. Ed. 906 ..... 9, 14
Douglass Case, 279 U. S. 377 9
Gaines vs. Henning, 65 U. S. 631 19
Gibbons vs. Ogden, 9 Wheat. 1, 6 L. Ed. 23 16
Lancaster, Rec. R. R., vs. Mrs. Dunn, Admr., 153 La. 15, 95 So. 385 13
McKnett vs. St. L. & S. F. R. R., 292 U. S. 230 9
Mondou vs. New York N. H. & H. R. Co., 223 U. S. 1, 58 ..... 8, 9
Mo. ex rel. R. R. Co. vs. Taylor, 266 U. S. 200, 45 S. Ct. 47, 69 L. Ed. 247, 42 A. L. R. 1232 18
National Milling Co. vs. Columbia Milling Co., 292 U. S. 511, 54 S. Ct. 797, 78 L. Ed. 1396 17
Payne, Agent, vs. Knapp, 197 Iowa 737, 198 N. W. 62 13
Peterson vs. Ry., 244 N. W. 823 14
Pollard vs. Bailey, 87 U. S. 527, 22 L. Ed. 376, 378 16
Savage vs. Jones, 225 U. S. 501, 533, 56 L. Ed. 1182, 1195 16
Schendel vs. McGee, District Judge, 300 Fed. 273, 278 12
Schendel vs. D. C., 156 Minn. 380, 194 N. W. 780 12
So. Pac. R. Co. vs. Klinge, 65 F. 2d 85, c. d. 290 U. S. 657 15
So. R. Co. vs. Cochran, Judge, (6 C. C. A.) 56 F. 2d 1019 12
Spoor vs. C., R. I. & P. Co., 191 Iowa 1134, 183 N. W. 580 13
Teel, Admr., vs. C. & O. R. Co., 204 Fed. 917, 47 L. R. A. (N. S.) 223 18

Wabash R. Co. vs. Peterson, 187 Iowa 1331, 175 N. W. 533 13

Wabash vs. Bridal, 94 F. 2d 117, c. d. 305 U. S. 602, 83 L. Ed. 582, 59 S. Ct. 602 18

Y. & M. R. R. Co. vs. Mullins, 249 U. S. 531, 63 L. Ed. 754 14

ACTS

Federal Employers' Liability Act (45 U. S. C. A. 56) 5, 7, 14, 18

CONSTITUTION

United States Constitution, Article IV 8

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MRS. JESSE MILES ET AL., PETITIONERS,

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ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONERS ON THE MERITS.

This brief seeks to reverse the judgment of the Court of Appeals of Tennessee and the Supreme Court of Tennessee which granted the respondent's application for an injunction to restrain Mrs. Miles from directly or indirectly doing or performing any actions in connection with, counseling or advise with or in any manner communicating with the administrator or his attorneys for the purpose of, or any effort to prepare the case for trial of *R. R. Adams, administrator of estate of Paul H. Miles, deceased,* v. *Illinois Central Railroad Company,* now pending in the Circuit Court of St. Louis, State of Missouri (R. 12).

Certain pleas were filed by Mrs. Miles and her daughters and among them a demurrer extensively questioning the power and the propriety of the chancery court enjoining this cause of action which was granted under the

Federal Employers' Liability Act which act gave venue jurisdiction to the Missouri state court and the state court had no power or right to take that which the Congress had granted, and the federal courts have construed the act or giving the right under that jurisdiction that Paul H. Miles was granted while at his post of duty and while engaged in interstate commerce and the railroad company's original bill and amended bill set forth this fact that he was engaged in interstate commerce at the time of the injury which resulted in his death. The demurrer went forth and challenged the railroad company's right under this federal law to maintain said injunction because there was no equity on the face of the bill, and there were no names of the witnesses set forth, and there were no avermenţs that the witnesses' testimony could not be taken by deposition as provided by the statutes (R. 21).

The chancellor overruled the demurrer, and, by exercising a discretion, granted an appeal to the Tennessee State Supreme Court which appellate court only has jurisdiction to pass on questions raised in a demurrer. The Supreme Court overruled the demurrer (174 Tenn. 676) but remanded the case to ascertain whether or not the railroad company was doing business in Missouri at the time it was sued, yet the original and amended bill of the railroad company admitted that it was engaged in interstate commerce and business in the city of St. Louis, Missouri, where sued (R. 2, 3, 8).

Upon remand of the case to the trial court, defendants relied upon the demurrer which the opinion and decree of the Supreme Court said they could rely (174 Tenn. 687), and they filed extensive answers raising every question as to the propriety and the jurisdiction of the chancery court to grant and maintain the injunction in this cause (R. 36-48).

Testimony was heard as to the convenience of the railroad company in trying the case in Tennessee, which Tennessee law incidentally requires twelve jurors to

render a verdict in civil cases while the statutory laws of Missouri, where the said suit was pending, requires only nine jurors to render a verdict in civil cases. While the Illinois Central Railroad Company meagerly charged that it was engaged in interstate commerce in St. Louis, Missouri, and the meagerness of this charge prompted the Supreme Court of Tennessee to remand the cause to ascertain what kind of business the railroad company was actually doing in Missouri under its averments of its original and amended bill (see 174 Tenn. 685). Defendants took the testimony of A. E. Lawler, general auditor of the Illinois Central Railroad Company (R. 105), who testified of the various officers, offices, and business transacted by the Illinois Central Railroad Company in St. Louis, Missouri, which showed in an uncontradicted manner that the railroad company operated many trains into the city of St. Louis and that its business amounted to $1,488,710.74 for the year in which it had been sued (R. 109).

When the cause was heard before the chancellor, he was constrained to hold that the railroad company was doing business in the State of Missouri, and further held that the prosecution of *R. R. Adams, administrator of the estate of Paul H. Miles,* v. *Illinois Central Railroad Company* will be oppressive and inequitable to the complainant and a burden on commerce and business of the complainant, but yet he sustained the demurrer and merits of the case, and dissolved the injunction, and dismissed the bill (R. 118).

The railroad company appealed to the court of appeals which had no jurisdiction on demurrer. The only assignment of error by the railroad company filed in the court of appeals was that to permit the Adams suit to be prosecuted in the Missouri court would result in additional oppression, injustice unnecessary and unquestionable, and that it would amount to a denial of justice (R. 119-120).

The court of appeals on July 1, 1940, reversed the chancery court and sustained the injunction sought by the railroad company (see opinion 120-122, decree, R. 133-134). Petition for certiorari was filed July 22, 1940 (R. 141), and four assignments of error (R. 143) to the Supreme Court of Tennessee raising one of the questions that has been raised in the demurrer and in the answer on the merits (R. 134-141). The Supreme Court of Tennessee, on January 11, 1941, denied certiorari to the court of appeals (R. 141-143). Petition for certiorari was filed in this cause July 14, 1941, and on November 10, 1941, certiorari was granted (61 S. Ct. 177).

SPECIFICATION OF ERRORS.

Your petitioner submits that the court of appeals and the Supreme Court of Tennessee were in error in the following respects:

(1) Both courts erred in an interpretation of the Federal Employers' Liability Act (45 U. S. C. A. 56).

(2) Both courts cited and followed dicta in 53 F. 2d 739 as being federal rules or decisions, and did not follow the true determinative interpretation of this fedderal statute by the federal courts in numerous other cases cited.

(3) Both appellate state courts of Tennessee erred in holding that it was proper and that they had jurisdiction to enjoin Mrs. Miles from aiding or taking any part in the prosecution of this St. Louis suit, of which under the federal statutes she would be the beneficiary because the Tennessee courts did not have jurisdiction to so enjoin, and further, it was not proper to enjoin upon the uncontradicted facts shown in said record (R. 143-141, incl.).

(4) The appellate court of Tennessee committed error in reversing the trial court, and in granting, and in sustaining the injunction in this case, because the cause of action enjoined came from an act of Congress, and the act of Congress that created the cause of action and venue jurisdiction covered the whole field, and the state courts of Tennessee could not cut off, pare down and destroy that jurisdiction which was granted by Congress (R. 134 incl.).

(5) The appellate court of Tennessee committed error in sustaining the injunction, because the privilege of venue jurisdiction granted by the legislative body of Congress which granted the rights pursued cannot be frus-

trated or prevented for reasons of convenience or expense to the railroad company, because the act of Congress and the construction of same by federal courts. This was a privilege which Congress had granted to Mrs. Miles, and the Tennessee courts took this privilege from her and gave it to the opposite parties, the railroad company, against whom the specific privilege was granted (R. 134-141, incl.).

(6) The appellate court of Tennessee committed error by holding that the injunction should be maintained because the suit filed in Missouri would be a burden against the railroad company being oppressive and unreasonable (R. 134-141, incl.).

(7) The appellate court of Tennessee committed error by granting a remedy to the railroad company which conflicted with the legislative act of Congress, and the Tennessee courts have granted to the railroad company in this case a remedy which should be sought by the railroad in the Halls of Congress and not in the courts, because the remedy is legislative and not judicial (R. 134-141, incl.).

(8) The appellate court of Tennessee committed material error because there was no equity on the face of the bill, and no substantial justifiable grounds shown in the uncontradicted evidence why injunction should have been maintained in this cause (R. 134-141, incl.).

(9) The appellate court of Tennessee committed error in not according to Mrs. Miles her federal rights, and in not following the interpretation of this federal statute, by federal courts for the last thirty years in some thirteen decisions; and the state courts characterization, and the operations and effect of the state courts' opinions and decree cannot slice off, pare down, uproot, and destroy this federal right given Mrs. Miles by the constitutional act of Congress, and the jurisdiction which has become a part of the act itself (R. 134-141, incl.).

SUMMARY OF ARGUMENT.

1.

The Federal Employers' Liability Act, as amended by Congress April 5, 1910, and which is involved in this lawsuit, provided as follows:

> "Under this act an action may be brought in a Circuit Court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing of such action.
>
> "The jurisdiction of the courts of the United States under this act *shall* be concurrent with that of the *courts of the several states*, and *no case arising under this act* and brought in *any* state court of *competent jurisdiction shall be removed* to any court of the United States" (45 U. S. C. A. 56).

2.

It will be noted from the above language that Congress provided:

> "And *no case arising under this act* and brought in *any state court of competent jurisdiction* shall be *removed* to any court of the United States" (45 U. S. C. A. 56).

The Tennessee courts removed by this injunctive process the lawsuit brought in Missouri where the defendant is doing business, to either the Federal Courts of Tennessee or the state courts of Tennessee and this destroys, if permitted to exist, the effect of the act of Congress.

3.

Thirty years ago the Supreme Court of the United States interpreted this act of Congress in the case of

Mondou v. *New York N. H. & H. R. Co.*, 223 U. S. 1, and reversed the Supreme Court of Connecticut, which state courts had general jurisdiction, and which courts determined jurisdiction in the state court to hear this federal right and remedy, and the courts, after discussing fully the supremacy clause of the United States (Art. IV, U. S. Con.), said:

> "When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for *all the people and all the states* and thereby established a *policy for all*.
>
> "We conclude that *rights arising* under the act in question (Federal Employers' Liability Act) may be enforced, *as of right*, in the *courts of the states* where their jurisdiction, as prescribed by local law, is *adequate* to the occasion."

A unanimous court, in interpreting and construing this act of Congress, in answering the contention that state courts could not try causes of action arising under this federal statute as well as federal courts, and there would be great confusion in the state courts trying to interpret this federal statute, the court answered this in the following determinative and conclusive language:

> "We are not disposed to believe that the exercise of jurisdiction by state courts will be attended by any appreciable inconvenience or confusion; but be that as it may, it affords no reason for *declining a jurisdiction conferred by law.*"
>
> 223 U. S. 58.

Thus it will be seen that the Supreme Court of the United States, in construing the supremacy clause of the Constitution, held and settled the proposition that state courts, if given general jurisdiction, by the state laws, *they must exercise that jurisdiction* and *could not exercise discretion*, and *not entertain the lawsuit* as the trial court saw proper. This important and controlling question in this Miles case is settled by both the Supreme

Court of the United States and the Supreme Court of Missouri.

In the case of *Dimmit Hoffman* v. *Mo. ex rel. Foraker, Admr.*, 309 Mo. 625, 274 U. S. 20, 71 L. Ed. 906. Judge Hoffman held that under the Missouri statutes that *he could exercise discretion*, and as the defendant company claimed that it had *eleven witnesses* that it would have to bring *from the State of Kansas* where the accident occurred and that *great inconvenience, expense, burden, and burden upon interstate commerce* would result if the Missouri trial court permitted the case to be tried there, and while this question was tried in that court and not in some other court, *the trial court was able to pass upon the question as could a court of equity.* The trial court was not important, but under the supremacy clause of the Federal Constitution, and under the statutory provisions of Missouri the trial court had *general jurisdiction* and *had no right to deprive Foraker*, the administrator, from proceeding in said state courts as was provided in the act of Congress.

This question having been settled by both the Supreme Court of Missouri and the Supreme Court of the United States, is *stare decisis*, and settles the question in this Miles case.

It is true that in the *Douglass Case*, 279 U. S. 377, where the State Statute of New York clothed its trial courts with the *discretion to hear and determine any case brought by nonresidents of that state, or decline same* and if the trial court exercised that discretion, the other courts could not control that discretion. That case, though three of the ablest judges of the court dissented, did not weaken the *Hoffman Case*, 274 U. S., nor did it weaken the *Mondou Case*, 223 U. S.

And in the last case, *McKnett* v. *St. L. & S. F. R. R.*, 292 U. S. 230, the Alabama courts were reversed where they did not permit McKnett, a Tennesseean, and who

was injured in Tennessee, to enforce his right under the Federal Employers' Liability Act in the Alabama court. This question, however, being therefore thoroughly adjudicated by Missouri's highest court and by the Supreme Court of the United States in the Hoffman case, where the Miles case, through R. R. Adams, administrator, is pending, is settled and not open to further argument. There is no state statute in Missouri where the Adams case is pending which attempts to exclude such cases, but, on the contrary, it recognized, under the supremacy clause, that the Missouri courts *must not and cannot exercise a discretion*, but must try the cases filed there. In the case of *B. & O. R. Co. v. Kepner*, 62 S. Ct. 6, 10, the Supreme Court, in an opinion by Mr. Justice Reed decided November 10, 1941, held:

> "It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity, based on cost, inconvenience or harassment. When the section was enacted it filled the entire field of venue in federal courts. A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense. If it is deemed unjust, the remedy is legislative, a course followed in securing the amendment of April 5, 1910, for the benefit of employees. This court held in *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, that the burden on interstate commerce would be disregarded where the carrier had lines in the distant state. The importance of unhampered commerce is at least as great as that of a carrier's freedom from harassing incidents of litigation. Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York."

The Kepner case was begun nearly two years after the Miles case was started in the Tennessee courts, but

the Tennessee courts delayed Mrs. Miles's case unnecessarily for two years and evidently the Kepner case was thought the best case for the railroads in existence in the United States to raise this question, as the railroads had charged that it would cost them four thousand ($4,000) dollars to defend that case in New York, and that it had approximately twenty-five witnesses that had to travel over 700 miles; that it would have to take numerous physicians, surgeons, radiologists, and hospital attendants, and others, who gave Kepner medical aid, and numerous other railroad witnesses, who had inspected the premises at the said accident. The railroads had pursued for thirty years, ever since this act was created by Congress, to have the courts undo what Congress had done and override what federal court decisions before the Kepner case had held against such a proposition, and the railroads were successful in a number of states, like Tennessee and were not successful in other state courts which followed federal court decisions which interpreted this act of Congress correctly. If the railroads had thought that this venue jurisdiction statute was unjust and an undue burden on railroads, *their remedy* was well marked and plain and they should have traveled to the *halls of Congress* for such *remedy* and *not to the courts of equity,* in which they had sought to undo what Congress had done.

4.

If the Amendment of April 5, 1910, Placed a Burden upon the Railroads Their Remedy Should Be Carried to the Halls of Congress and Not to the Courts of Equity to Override and Destroy the Law Enacted by Congress.

The Supreme Court in the *Kepner Case,* 62 S. Ct. 6, 10, in the opinion by Mr. Justice Reed answered this question as follows:

> "If it is deemed unjust, *the remedy is legislative,* a course followed in securing the amendment of April

5, 1910, for the benefit of employees. This court held in *Hoffman* v. *State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, that the burden on interstate commerce would be disregarded where the carrier had lines in the distant state. The importance of unhampered commerce is at least as great as that of a carrier's freedom from harassing incidents of litigation. Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York."

The Sixth Circuit Court of Appeals, in the case of *So. R. Co.* v. *Cochran, Judge*, 6 C. C. A., 56 F. 2d 1019, and in the case of *C. & O. R. Co.* v. *Vigor, Admr.*, 90 F. 2d 7 (c. d. 302 U. S. 705, 58 S. Ct. 26, 82 L. Ed. 545), and the case from the eighth circuit of *Schendel* v. *McGee, District Judge*, 300 Fed. 273, 278, held:

> "We are not concerned with the *justice* or the *wisdom* of such *legislation*. It being the law, it is the court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case" (citing three federal cases).

Therefore, we submit with all confidence that the *remedy*, if the *railroads feel that the burden is too great to abide by the language of the act of Congress*, is to appeal to the Congress *to repeal this venue statute* and not ask a court of equity to not follow the law, but to uproot, pare down, and destroy the law. The Minnesota state court reached the right conclusion in *Schendel* v. *D. C.*, 156 Minn. 380, 194 N. W. 780, when it held:

> "Under the doctrine of the second employers' liability cases, the state court must exercise its jurisdiction, if adequate to the occasion when a suitor comes to it. It is not a matter of its pleasure. It may not want his case. It may think the burden of trying it and the attendant expenses should be borne in another state; but there is a right in the suitor and a corresponding duty in the court, so the Supreme Court said."

The Supreme Court of Louisiana decided the question correctly when it held:

> "The Federal Employers' Liability Act expressly conferred upon the defendant in this suit the right to bring her action for damages or compensation in the court in which she brought it. * * * We cannot assume that the Congress of the United States, in allowing such an action to be brought in the district in which the defendant shall be doing business at the time of the commencement of such action, did not have in mind the inconvenience that would result in almost, if not quite, every case, from bringing the suit elsewhere than at the place where the cause of action arose."
>
> *Lancaster, Rec. R. R.*, v. *Mrs. Dunn, Admr.*, 153 La. 15, 95 So. 385.

This unanswereable interpretation of this act of Congress was cited, approved and followed by Judge Underwood in *C. & O. R. Co.* v. *Vigor, Admr.*, 17 Fed. Supp. 602, affirmed 90 F. 2d 7 (c. d. 302 U. S. 705).

The Supreme Court of Iowa in the case *Payne, Agent,* v. *Knapp,* 197 Iowa 737, 198 N. W. 62, overruling its former three opinions, on rehearing, 195 N. W. 1, and the case of *Spoor* v. *C., R. I. & P. Co.,* 191 Iowa 1134, 183 N. W. 580, and *Wabash R. Co.* v. *Peterson,* 187 Iowa 1331, 175 N. W. 533, said:

> "But in view of the *holding that the act of Congress confers a right that cannot be taken away by state legislation* upon a claimant to bring an action under the Federal Employers' Liability Act in any federal court designated by the act, and also gives concurrent jurisdiction to any state court of competent jurisdiction, it must follow *that the latter right is also one that the state cannot by legislation impair.* In other words, since the act confers concurrent jurisdiction of actions brought under it upon certain designated federal courts, and also upon certain state courts of competent jurisdiction, the right being given by federal statute, to resort to the latter must be as im-

mune from state prohibition as is the right to enter the former (see *Spokane & I. E. R. Co.* v. *Campbell*, 241 U. S. 497, 36 S. Ct. 683, 60 L. Ed. 1125)."

The same was held by the Supreme Court of Minnesota in the case of *Peterson* v. *Ry.*, 244 N. W. 823.

These state decisions are sound and unanswerable because they are based upon sound logical and fundamental law, because Congress covered the whole field of liability and venue jurisdiction by the Federal Employers' Liability Act, and this act of Congress governs whether the suit is brought in a state court or in a federal court, because the *right and the remedy comes from the same womb of creation*—Congress of the United States. It was expressly held in 1919, *Y. & M. R. R. Co.* v. *Mullins*, 249 U. S. 531, 63 L. Ed. 754; that the trial of these cases under the Federal Employers' Liability Act in state courts, that the trial court could now follow the "Mississippi *prima facie* Act." And in numerous other cases the Supreme Court so held.

Tennessee appellate courts' holdings in this Miles case are therefore unsound and do not conform to the fundamental law, and should be reversed.

5.

Liability and Remedy Were Created by the Original and Amended Act of Congress and That Remedy, and That Alone, Must Be Employed.

The act of Congress, 45 U. S. 56, provided that an injured employee engaged in interstate commerce, or in case of his death, his personal representative, could sue the carrier:

"In the district of the residence of the defendant."

The state courts and the federal courts in the *Hoffman Case, supra*, expressly held that the duty was man-

datory upon the state courts to entertain and maintain a suit under this federal act in the state courts, and this question has been adjudicated and settled beyond doubt in Missouri.

In 1933 in the case of *So. Pac. R. Co.* v. *Klinge*, 65 F. 2d 85, c. d. 290 U. S. 657, construing section six of the amendment said:

> "Section six offers plaintiff a choice of the districts
>
> (a) defendant's residence—in this case Kentucky.
>
> (b) Where the cause of action arose—in this cause, Oregon.
>
> (c) Where the defendant is doing business at the time of commencing of the action—in this case, Utah, where the defendant was doing business as he had a right to do."

Therefore under the above-quoted language of the act that suit might be brought:

"In the district of the residence of the defendant," suit could have been maintained by Mrs. Miles or her representative in the federal or state courts of East St. Louis, Illinois.

This being settled in the Hoffman case and in the *Klinge case, supra*, it is not open to argument further. And if it would not be inequitable to prosecute the suit at East St. Louis, Illinois, under what logic, reason or proposition or law or equity would it be inequitable to prosecute the suit a mile or two west of there, across the Mississippi River, where the defendant was operating fourteen or fifteen trains a day, and had an army of employees, and a cantonment of offices, and was doing a remunerative business of $1,488,710.74 per year? (R. 109.)

As early as Chief Justice Marshall's opinion in *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23, it was announced, and has ever since been followed, as the law, and especially in *Savage* v. *Jones*, 225 U. S. 501, 533, 56 L. Ed. 1182, 1195, as follows:

> "When the question is whether a federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed.
>
> "If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulations of Congress within its sphere of its delegated power."

Sixty-seven years ago in *Pollard* v. *Bailey*, 87 U. S. 527, 22 L. Ed. 376, 378, Chief Justice Waite, interpreting liability and venue statute, said:

> "Liability and remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability *is coupled with a provision for special remedy*, that remedy, and that alone must be employed."

In the *Kepner Case*, 62 S. Ct. 10, the court, through Mr. Justice Reed, said:

> "A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense."

Three times before this announcement, twice in cases involving the Federal Employers' Liability Act, and once in a case not employing the Federal Employers' Liability Act, the Supreme Court held:

> "As a practical matter, courts could not undertake to ascertain in advance of trial the number and

importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience of the parties. *Denver & R. G. W. R. Co.* v. *Terte, supra*, 284 U. S. 287, 76 L. Ed. 297, 52 S. Ct. 485; *Hoffman* v. *Mo.*, 274 U. S. 21, 71 L. Ed. 907; 78 L. Ed. 1402, 292 U. S. 511."

National Milling Co. v. *Columbia Milling Co.*, 292 U. S. 511, 54 S. Ct. 797, 78 L. Ed. 1396.

In the *National Milling Co. Case, supra*, the court further answered in the scholarly and terse language of Mr. Justice Cardozo:

"Such a suit *may be a burden*, but *oppressive* and *unreasonable, it is not.*"

6.

It Would Not Only Frustrate the Intention and Purposes of the Act of Congress to Permit an Injunction in This Miles Case to Stand, But Would Take from Mrs. Miles a Privilege That Congress Has Granted Her and Give It to the Railroad, to Whom the Privilege Was Not Granted But Against Whom the Privilege Was Granted to Mrs. Miles.

Judge Underwood decided this question and said that it would be,

"Taking a privilege from one upon whom it is conferred by statute, and giving it to the opposite party against whom that specific privilege was granted."

C. & O. v. *Vigor*, 17 Fed. Supp. 602, aff. 90 F. 2d 7, c. d. 302 U. S. 705:

The Supreme Court of the United States, in two decisions, has recognized and held:

"The grant of concurrent jurisdiction implies that in the first instance *the plaintiff shall have the choice of the court.* As an incident, he is entitled to whatever *remedial advantage inheres* in that *particular*

forum. M. & St. L. R. Co. v. *Bombolis*, 241 U. S. 211; 60 L. Ed. 961."

Mo. ex rel. R. R. Co. v. *Taylor*, 266 U. S. 200, 45 S. Ct. 47, 69 L. Ed. 247, 42 A. L. R. 1232.

The Sixth Circuit, in *Teel, Admr.*, v. *C. & O. R. Co.*, 204 Fed. 917, 47 L. R. A. (N. S.) 223, interpreting this act of Congress said:

> "The manifest purpose was to yield to the suitors under it the choice of tribunal as between the courts of the United States and the several states."

The statute laws of Missouri, of which this court will take judicial knowledge, provides that jury verdicts may be rendered by nine jurors instead of twelve. Tennessee statutes, of which this court will take judicial knowledge, as well as the federal law in Tennessee and throughout the country, requires twelve jurors to render a verdict. Therefore, under the language of the Supreme Court this remedial advantage in the Missouri forum is a right created by Congressional act, and the interpretation of same which gives this right to Mrs. Miles, and the Tennessee appellate courts took these rights away from her and Santa Claused them to the railroad company.

7.

Under the Amendment of April 4, 1910 (45 U. S. C. A. 56), and under the Further Amendment of June 4, 1941, the Act of Congress That Creates the Right and Remedy Provides a Three-Year Statutory Limitation.

It was been expressly held by the federal courts construing this limitation act that it is not merely a limitation period created by this act—it is not a mere statute of limitations, but a *condition of the right of action.*

Bell v. *Wabash R. Co.*, (8 C. C. A.) 50 F. 2d 569.

Wabash v. *Bridal*, 94 F. 2d 117, c. d. 305 U. S. 602, 83 L. Ed. 582, 59 S. Ct. 602.

Therefore, if the Tennessee appellate court's injunction in this case is to be sustained then indeed a most inequitable result that can be imagined exists because Mrs. Miles's cause is completely destroyed, because this "condition may not be waived" and it is a "condition" that evidently would be enforced and *Mrs. Miles's right of recovery entirely destroyed in a new suit.*

Conclusion.

The carriers, represented by the ablest of legal talent in the United States, have been dissatisfied with this act of Congress for thirty-one years. They have appealed to the federal courts, whose duty it has been to interpret and construe this act of Congress. Fourteen decisions have been rendered by the federal courts construing this venue jurisdictional amendment of 1910. No efforts seem to have been made by the carriers to seek relief in the halls of Congress where this act was created. But the carriers have succeeded in some state courts which have evidently, erroneously *applied legislative relief* and called it *judicial relief*. Many of the courts have said that the remedy, if the carriers thought the act of Congress unjust, was to apply for *legislative relief* and not judicial. It is hoped that this highest judicial tribunal in this nation will settle this question and so mark the highway of travel that there will be no further long and prolonged litigation to prevent the employee or his widow from the relief created by the womb of Congress, whether the suit is instituted in the federal or in state court. This prolonged litigation for thirty-one years reminds us of the most noted case in the law book of *Gaines* v. *Henning*, 65 U. S. 631, in which the court said:

> "Thus, after a litigation of thirty years has this court adjudicated the principles applicable to her rights in her father's estate. They are now finally settled. When, hereafter, some distinguished American lawyer shall retire from his practice to write the

history of his country's jurisprudence, this case will be registered by him as the most remarkable in the records of its courts."

With the fullest measure of confidence in the end that will be reached by this highest tribunal of our great nation, we most confidently submit this brief and the rights of the client.

Respectfully submitted,

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